



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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SEP - 9 2005

2005 SEP -9 PM 3:55

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EPA REGION VIII  
HEARING CLERK

Ref: 8ENF-W-NP

**CERTIFIED MAIL** 7004 2510 0004 8289 8578  
**RETURN RECEIPT REQUESTED**

CT Corporation System, Registered Agent  
1720 Carey Ave., Suite 200  
Cheyenne, WY 82001

Re: Order for Compliance under the  
Clean Water Act 33 U.S.C. § 309(a)

Dear Registered Agent:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance ("Order") issued to Frontier Refining, Inc., for alleged violations of the federal pretreatment requirements. The Order specifies the nature of the violations under the Clean Water Act (Act), as amended, 33 U.S.C. § 1251, *et seq.* The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary in order for the Frontier Refining, Inc., to achieve compliance with the Act. Furthermore, the Order requires you to notify EPA in writing within ten (10) days whether you intend to comply with the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued there under. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 of the Act, 33 U.S.C. § 1368, allows for debarment from federal contracts and/or loans for any noncompliance with the Act or an order. Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal action in U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited herein.

In a letter of September 2, 2005, Mel Wilkenfeld of Frontier Refining, Inc. requested approval to discharge up to 1.35 pounds/day of selenium to the Cheyenne Board of Public Utilities' (BOPU's) Crow Creek wastewater treatment facility. The request, which would allow Frontier Refining to discharge more wastewater to the treatment facility, was made due to the rising level of the Porter Draw reservoir. The refinery's wastewater has been diverted to the reservoir for some time because it does not meet the discharge limits of either Frontier Refining's direct or indirect discharge permits.

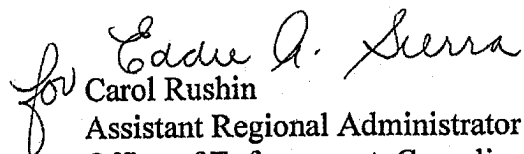
In response to this request, EPA has given the Cheyenne Board BOPU permission to increase the loading of selenium it receives from industrial users by 0.1 pounds/day above the recalculated local limits. Cheyenne BOPU can, at its discretion, continue to increase the selenium loading every few days while conducting additional monitoring to assure water quality standards and other environmental standards continue to be met. While EPA is concerned about the rising level in Porter Draw Reservoir, EPA could not approve the blanket increase to the 1.35 pounds/day requested without establishing that water quality standards will be met.

In light of this situation, EPA asks that Frontier Refining, Inc submit the following:

- a) Within thirty (30) days, submit a schedule of actions being taken to return Frontier Refining, Inc's wastewater treatment plant to full operation. This schedule shall include dates by which flow is proposed to be diverted from the Porter Draw reservoir to the plant, and an indication of the quantity of flow to be discharged.
- b) Within (90) days, submit a contingency plan for wastewater treatment and storage which describes what actions have or will be taken to prevent the current situation, or a similar crisis, from reoccurring.

Please review this letter and the enclosed Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the Frontier Refining, Inc.'s compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Amy Swanson, Enforcement Attorney, at (303) 312-6906, and Colleen Gillespie, NPDES Enforcement Unit, at (303) 312-6047.

Sincerely,

  
for Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Brian Lovett, WDEQ (w/encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2005 SEP -9 PM 3:46

IN THE MATTER OF:

Frontier Refining, Inc.  
2700 E. 5<sup>th</sup> Street  
Cheyenne, Wyoming 82007

Respondent.

FILED  
EPA REGION VIII  
HEARING CLERK  
**ORDER FOR COMPLIANCE**

Proceeding Issued Pursuant to  
Section 309(a) of the Clean Water Act

Docket No. CWA-08-2005-0048

**STATUTORY AUTHORITY**

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This authority has been delegated to the undersigned official.

This Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to require reports necessary to determine compliance. This authority has been delegated to the undersigned official.

Section 307(b) of the Act, 33 U.S.C. § 1317(b), directs the Administrator of the EPA to establish Pretreatment Standards applicable to indirect discharges to control those pollutants that are determined not to be susceptible to treatment by a publicly owned treatment works (POTW) or which would interfere with the operation of such POTW; these standards are promulgated at 40 C.F.R. § 403.

### **FINDINGS OF FACT**

1. Respondent, Frontier Refining, Inc., is a corporation incorporated in the State of Delaware and registered to do business in the State of Wyoming.
2. Respondent is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. Respondent owns and operates a petroleum refinery facility ("facility") located at 2700 E 5<sup>th</sup> Street, Cheyenne, Wyoming, for the purpose of gasoline production (Standard Industrial Classification 2911).
4. Respondent has discharged up to 460 gallons per minute of process wastewater to the Cheyenne Board of Public Utilities (BOPU) since August 2004. The process wastewater contains selenium, among other substances, and is a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
5. Respondent began operating after December 21, 1979, and is a New Source, subject to the categorical pretreatment standards at 40 C.F.R. § 419.27.
6. Respondent is an "Industrial User" within the meaning of 40 C.F.R. § 403.3(h), and a "Significant Industrial User" as defined at 40 C.F.R. § 403.3(t).
7. Respondent is an "Indirect Discharge" as defined by 40 C.F.R. § 403.3(g).

8. The Cheyenne BOPU has jurisdiction over disposal of sewage, industrial wastes, or other wastes and is a "municipality" within the meaning of section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, for purposes of federal enforcement.
9. The Cheyenne BOPU owns and operates a POTW known as the Dry Creek wastewater treatment facility, located at 8911 Campstool Road, Cheyenne, Wyoming, which has a design capacity of 7.0 million gallon per day (MGD) and an average daily flow of 5.4 MGD. The Dry Creek wastewater treatment facility discharges treated wastewater into Crow Creek. NPDES permit number WY-0022934, issued by the State of Wyoming on May 7, 2003, and effective on June 1, 2003, authorizes the BOPU to discharge in accordance with section 402 of the Act, 33 U.S.C. § 1342.
10. The Cheyenne BOPU owns and operates a POTW known as the Crow Creek wastewater treatment facility, located at 4403 Livingston Street, Cheyenne, Wyoming, which has a design capacity of 4.5 MGD and an average daily flow of 3.2 MGD. Crow Creek wastewater treatment facility discharges treated wastewater into Crow Creek. NPDES permit number WY-0022381, issued by the State of Wyoming on May 7, 2003, and effective on June 1, 2003, authorizes the Cheyenne BOPU to discharge in accordance with section 402 of the Act, 33 U.S.C. § 1342.
11. Crow Creek is an interstate water and tributary to the South Platte River, and a "water of the United States" and "navigable water" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

12. The General Pretreatment Regulations at 40 C.F.R. § 403.8(a), provide that "[A]ny POTW (or combination of POTWs operated by the same control authority) with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program" unless the National Pollutant Discharge Elimination System (NPDES) State otherwise assumes the responsibility.
13. Any such POTW Pretreatment Program must receive EPA approval pursuant to 40 C.F.R. § 403.8(b). Upon its approval by EPA, the responsibility to apply and enforce the National Pretreatment Standards transfers to the POTW.
14. EPA approved the Cheyenne BOPU's POTW Pretreatment Program on March 28, 1986, at which time the Cheyenne BOPU became the "Control Authority" within the meaning of 40 C.F.R. § 403.12(a).
15. Pursuant to 40 C.F.R. § 403.5(c) of the General Pretreatment Regulations and referenced by 40 C.F.R. § 403.8(f)(4), "Each POTW developing a POTW Pretreatment Program shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits."

16. 40 C.F.R. § 403.5(d) states that, when a POTW has developed specific prohibitions or limits, such limits shall be deemed Pretreatment Standards for the purpose of section 307(d) of the Act, 33 U.S.C. § 1317(d).

17. EPA approved the Cheyenne BOPU's technically developed local limits on January 29, 1996. The technically developed local limits include, but are not limited to, a requirement that Industrial Users and Significant Industrial Users discharge wastewater with a concentration of selenium no more than 0.045 mg/L.

18. On July 1, 2004, the Cheyenne BOPU issued an individual control mechanism to Respondent which requires Respondent to discharge wastewater with a concentration of selenium no more than 0.045 mg/L.

19. The Cheyenne BOPU prepared and submitted to EPA the Pretreatment Program Annual Report for 2004 for the Crow Creek facility on March 28, 2005.

20. EPA conducted a Pretreatment Compliance Inspection (Inspection or PCI) of the Cheyenne BOPU's pretreatment program on June 7, 2005. The Inspection included a physical inspection of the facility, file review and personnel interviews.

## **VIOLATIONS**

### **Count 1**

#### **(Failure to Submit Baseline Monitoring Report)**

21. 40 C.F.R. § 403.12(b) requires that at least 90 days prior to beginning a discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the Control Authority a report containing the information listed in paragraphs (b)(1)-(5) of section 403.12. This report is known as a baseline monitoring report or "BMR". New Sources are required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.

22. Respondent did not submit a BMR to the Cheyenne BOPU at least 90 days prior to beginning a discharge.

23. Respondent's failure to submit a BMR report constitutes a violation of 40 C.F.R. § 403.12(b), and section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

### **Count 2**

#### **(Failure to Submit 90-Day Compliance Report)**

24. 40 C.F.R. § 403.12(d) requires that a report on compliance with categorical pretreatment standards be submitted to the Control Authority within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to

the Control Authority a report containing the information described in paragraphs (b)(4)-(6) of 40 C.F.R. § 403.12

25. Respondent did not submit a compliance report to the Cheyenne BOPU within 90 days after beginning to discharge into the POTW, due on or before September 30, 2004.

26. Respondent's failure to submit a compliance report constitutes a violation of 40 C.F.R. § 403.12(b), and section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

**Count 3**  
**(Selenium Local Limit Exceedances)**

27. As referenced above, the Cheyenne BOPU's local limit required that Industrial Users and Significant Industrial Users discharge wastewater with a concentration of selenium no more than 0.045 mg/L. On July 1, 2004, the Cheyenne BOPU issued an individual control mechanism to Respondent requiring Respondent to discharge wastewater with a concentration of selenium no more than 0.045 mg/L.

28. Respondent exceeded the selenium limit identified in its individual control mechanism approximately twenty-four times during the period August 4, 2004, to July 27, 2005. These exceedances are summarized in Attachment A.

29. Respondent's exceedances of the selenium limit described in Attachment A constitute twenty-four separate violations of the Respondent's individual control mechanism, 40 C.F.R. § 403.5(d), and section 307(d) of the Act, 33 U.S.C. § 1317(d).

## ORDER

Based upon the foregoing Violations, and pursuant to the authority delegated to the individual below, It is hereby ORDERED THAT:

30. Upon receipt of this Order, Respondent shall immediately take all actions necessary to meet the requirements of the Act.
31. Beginning immediately, Respondent shall monitor its discharge for selenium daily. The analysis shall be expedited to the extent possible.
32. Within ten (10) days of receipt of this Order, Respondent shall give written notice to EPA and the Wyoming Department of Environmental Quality of its intent to comply with the requirements of this Order.
33. Within ten (10) days of receipt of this Order, Respondent shall provide EPA with the following:
  - a. A schematic showing the flow of wastewater from the refinery to its wastewater treatment facility, Porter Draw reservoir, Crow Creek, Crow Creek wastewater treatment facility, etc. The diagram shall indicate maximum flows, and average flows during normal operation. If the average flow varies depending on season (i.e. addition of cooling water in warm weather) or changes in production, please indicate this fact.
  - b. A short term plan to maximize evaporation from the Porter Draw Reservoir.

34. Within thirty (30) days, Respondent shall submit a report to EPA describing the actions proposed and/or taken to prevent further violations of its individual control mechanism. At a minimum, this report shall include a description of what actions Respondent will take to ensure compliance with the selenium limits of its individual control mechanism, and a proposed time line for implementing these actions. The timeline shall include both a short term and long term plan to control selenium. The report shall include all information required in the compliance report as described at 40 C.F.R. § 403.12(d).
35. EPA will review the submission described in paragraph 34 and may: (a) approve the submission; (b) approve the submission with modifications; or (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments.
36. Upon receipt of a notice of disapproval or a request for a modification as described in paragraph 35 above, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan(s). Respondent shall have the opportunity to object in writing to the notification of disapproval or request for modification given pursuant to paragraph 35 within fifteen (15) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.

37. Upon EPA approval, or approval with modification of the plan, the plan and its implementation schedule will be incorporated into this Order.
38. Within fourteen (14) days of completion of the plan identified above, Respondent will submit an itemized list of all costs incurred to implement the plans.
39. In the case of non-compliance with any schedule date listed in paragraph 34 of the Order, Respondent shall submit a written notice of non-compliance within fourteen (14) days. The notice shall include the cause for non-compliance and specify remedial actions being taken to comply.
40. All written notices and reports required by this Order shall be sent to Colleen Gillespie, of EPA at the following address

Colleen Gillespie (8ENF-W-NP)  
U.S. EPA Region 8  
Office of Enforcement, Compliance  
and Environmental Justice  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466

41. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.

42. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Act. Be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the imposition of civil penalties of up to \$32,500 per day for each violation of the Act, while section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

43. Nothing in this Order shall be construed to preclude the institution of further action under section 309 of the Act for those violations cited herein or relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION VIII  
Complainant.

Date: SEP - 9 2005

*for* Eddie A. Sierra  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ORDER FOR COMPLIANCE was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado, and that true copies of the same were sent as follows:

Via hand delivery to:

Honorable Alfred C. Smith  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300 (8RC)  
Denver, CO 80202-2466

Via certified mail to:

CT Corporation System, Registered Agent  
1720 Carey Ave., Suite 200  
Cheyenne, WY 82001

9/9/05  
Date

Colleen Gillespie  
~~Judith McTernan~~